

Bureau of Reclamation, Interior

§ 426.8

attribution is only made if the criteria listed in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section are met. If the trust fails to meet any portion of these criteria, the land held in trust will be ineligible to receive irrigation water until all of the criteria are met. The only exception is if the trust's and grantor's standard certification or reporting forms indicate that the land held by the trust has been attributed to the trust's grantor(s).

(i) The trust meets the criteria specified in paragraph (b)(1) of this section;

(ii) The grantor(s) of all land held by the trust is (are) identified within the trust document;

(iii) The conditions under which the trust may be revoked or terminated are identified within the trust document; and

(iv) The recipient(s) of the trust land upon revocation or termination is (are) identified within the trust document.

(3) For land held in an *otherwise revocable trust*, the land is attributed to the beneficiaries in proportion to their beneficial interests in the trust. However, this attribution is only made if the trust meets the criteria specified in paragraph (b)(1) of this section and the trust meets the additional criteria specified in paragraph (b)(2) of this section.

(i) If Reclamation cannot determine who will hold the land in trust upon termination or revocation of the trust, or who is the grantor(s) of the land held in trust, then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in paragraph (b)(2) of this section.

(ii) If the trust fails to meet the criteria listed in paragraph (b)(1) of this section, but does meet the additional criteria listed in paragraphs (b)(2) (ii) through (iv) of this section, then the land is attributed to the trustee.

(c) *Class beneficiaries.* For purposes of identifying beneficiaries, a class of beneficiaries specified within the trust document will be acceptable, as long as the trust document is specific as to the beneficial interest to which each member of the class will be entitled and the members of the class are identifiable.

(1) Attribution during any given water year will be provided only to

class beneficiaries that are natural persons and established legal entities. For purposes of administering the acreage limitation provisions, attribution to unborn or deceased persons, or entities not yet established, will not be allowed.

(2) If a trust includes a class of beneficiaries to which land subject to the acreage limitation provisions will be attributed, the trustee and each of the beneficiaries will be required to submit standard certification or reporting forms annually. The submittal of verification forms, as provided in § 426.18(l), will not be applicable to such trusts.

(d) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revocable trust that meets the criteria specified in paragraph (b)(2) of this section is revised by the grantor in a manner that precludes attribution of the land held in trust to the grantor:

(1) Before April 20, 1988, Reclamation will not assess full-cost rates for the land held by the revised trust for the period before it was revised; or

(2) On or after April 20, 1988, Reclamation will charge the full-cost rate for irrigation water delivered to any land held by the trust that exceeds the grantor's nonfull-cost entitlement, commencing December 23, 1987, until the trust agreement is revised to make it an irrevocable trust or an otherwise revocable trust.

§ 426.8 Nonresident aliens and foreign entities.

(a) *Definitions for purposes of this section:*

Domestic entity means a legal entity established under State or Federal law.

Foreign entity means a legal entity not established under State or Federal law.

(b) *Restriction on receiving irrigation water.* Notwithstanding any other provision of Federal reclamation law or these regulations, a nonresident alien or foreign entity that directly holds land in a district that is subject to the discretionary provisions is not eligible to receive irrigation water on such land. Nonresident aliens and foreign entities may hold land indirectly in

discretionary districts and both directly and indirectly in prior law districts and receive irrigation water on such land, subject to their acreage limitation entitlements.

(c) *Entitlements for nonresident aliens and foreign entities.* Except as provided in paragraph (d) of this section, all nonresident aliens and foreign entities will be considered prior law recipients, and shall have entitlements and eligibility only as prior law recipients as specified in §§ 426.5(d) and 426.6(b)(3).

(d) *Exception to prior law entitlement application.* (1) If a nonresident alien is a citizen of or a foreign entity is established in a country that has one of the following treaties with the United States or is a member of the listed organization, then that nonresident alien or foreign entity will not be restricted to prior law entitlements, provided the eligible landholding subject to the acreage limitation provisions is held indirectly:

- (i) Friendship, Commerce and Navigation Treaty;
- (ii) Bilateral Investment Treaty;
- (iii) North American Free Trade Agreement;
- (iv) Canada-United States Free Trade Agreement; or
- (v) Organization for Economic Cooperation and Development.

(2) Nonresident aliens and foreign entities that meet the criteria listed in paragraph (d)(1) of this section will be required to provide proof of citizenship or documentation certifying the country in which the entity in question was established. Districts will retain such documentation in the landholder's file.

(3) If a nonresident alien or foreign entity meets the criteria listed in paragraph (d)(1) of this section, and only holds eligible land subject to the acreage limitation provisions indirectly, then the nonresident alien may be treated as a United States citizen or the foreign entity may be treated as a domestic entity for purposes of application of the acreage limitation provisions for the land held indirectly.

(i) The nonresident alien or foreign entity may submit an irrevocable election to conform to the discretionary provisions as provided for in § 426.3(f). Conformance to the discretionary provisions through the submittal of a cer-

tification form will not be allowed as specified in § 426.3(f)(3).

(ii) Upon Reclamation's approval of the irrevocable election, a nonresident alien will be treated as having the ownership entitlement of a qualified recipient as described in § 426.5(b), for any land held indirectly. A foreign entity will be treated as a qualified recipient or a limited recipient as determined by the number of natural persons who are beneficiaries of the entity as specified by the definitions found in § 426.2, and the subsequent entitlement as provided in § 426.5(b) or (c), for any land held indirectly. The applicable nonfull-cost entitlements will be determined as described in § 426.6(b).

(iii) Reclamation will not approve irrevocable elections submitted by a nonresident alien or a foreign entity that holds any land directly in any prior law district.

(iv) Reclamation will not approve irrevocable elections submitted by a nonresident alien that is not a citizen of or foreign entity that has not been established in a country that has a treaty or international membership as specified in paragraph (d)(1) of this section.

§ 426.9 Religious or charitable organizations.

(a) *Definitions for purposes of this section:*

Central organization means the organization to which all subdivisions, such as parishes, congregations, chapters, etc., ultimately report.

Religious or charitable organization means an organization or each congregation, chapter, parish, school, ward, or similar subdivision of a religious or charitable organization that is exempt from paying Federal taxes under § 501 of the Internal Revenue Code of 1954, as amended.

(b) *Acreage limitation status of religious or charitable organizations that are subject to the discretionary provisions.* (1) Religious or charitable organizations or their subdivisions that are subject to the discretionary provisions have qualified recipient status, if:

(i) The organization's or subdivision's agricultural produce and proceeds from the sales of such produce are used only for charitable purposes;